IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-18161-2021(O&M)
Date of decision: 19.03.2024

Makhan Singh ...Petitioner

Versus

State of Punjab and Others … Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. G.S. Bhatia, Advocate for the petitioner

Mr. Swapan Shorey, DAG, Punjab.

Mr. Vikas Chatrath, Advocate for respondents No. 5 and 6

AMAN CHAUDHARY, J.(ORAL)

1. The present Civil Writ Petition under Articles 226/227 of the Constitution of India, is for quashing the impugned orders dated 16.05.2020 (Annexure P-2) directing recovery of excess amount of pension paid, with a further prayer seeking release of full pension and refund of the amount wrongly deducted so far.

2. Learned counsel contends that the petitioner was regularly receiving pension till the issuance of the impugned order, on the basis of which it was refixed and recovery to the tune of Rs 3,34,071/- was initiated, citing that there had been an error while computing his pension. Aggrieved by the same, he got a legal notice served on 08.12.2020, claiming that since there was no fraud or misrepresentation on his part, the action of the respondents is unjust and arbitrary.

3. Contrarily, learned counsel appearing on behalf of the respondent No.5-Bank, while referring to para no. 1 of the written statement submits that pension had been inadvertently miscalculated to be Rs. 4457/-, instead of the correct amount of Rs. 3500/-, which was brought to light in May 2020 during a

spot audit by the Punjab Government. A notice was issued to the petitioner to which no reply was submitted and subsequently, the pension was corrected and proceedings for recovery of the excess amount were initiated in easy monthly instalments of Rs. 4250/-, with effect from May 2020. The issue involved in the present case has already been decided against the petitioner by the Division Bench of this Court in **Balbir Singh vs. State of Haryana and others,** LPA-874 of 2014, decided on 04.09.2014, which was followed in **Surinderjit Singh vs. State of Punjab and others,** CWP-8511-2020 decided on 12.09.2023 and **Parkash Singh vs. State Bank of India**, CWP-18089-2019 decided on 29.01.2024.

4. The question whether revision of clerical error in fixing of pension and subsequent recovery of the excess amount so paid is correct in the eyes of law was discussed and answered in the affirmative in **Balbir Singh** (supra), relevant paras thereof read thus:

> "The appellant is not challenging the fixation of his pension. He also does not dispute that after re-fixation of his pension by the authorities, less payment was to be made, but due to inadvertent clerical error on the part of the bank authorities, excess amount was credited in his pension account, which he was not entitled to. In these circumstances, notice was issued to the appellant to refund the excess payment received by him. In our opinion, the said excess payment, which was made to the appellant due to clerical error on the part of the bank, is duly recoverable. The aforesaid judgments, relied upon by learned counsel for the appellant, are not applicable in the wake of the situation as sketched out above. The principle laid down in these judgments is that where the Government consciously makes excess payment to an employee considering that it was validly being given to him, but later on it is found that such employee was not actually entitled to receive the said amount, in that situation, if the excess payment was made under bonafide act of the State, and without any misrepresentation or fraud by the employee, recovery of such excess payment cannot be effected from the employee after his retirement. This principle enunciated in the aforesaid judgments does not apply to the facts of the present case. <u>Here, due to clerical error on the part of the bank, excess amount was credited in the pension account of the appellant, for which he was not entitled to either at that time or subsequently. Therefore, such amount has to be refunded by the appellant to the authorities, which has been received by him</u>

> in excess. The principle of unjust enrichment will be applicable in the present case and when the appellant is approaching this Court under Article 226 of the Constitution of India, he cannot be granted an inequitable benefit, by relying upon the aforesaid judgments. The necessary relief has already been granted to the appellant by the learned Single Judge, which in our opinion is more than the relief, which he deserves. We do not find any illegality in the order passed by the learned Single Judge.
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> No merit. Dismissed."

5. Relevant paras of **Parkash Singh** (supra), a similar case where rectification of wrongly fixed pension and recovery of excess pension paid prior to it was upheld, read thus:

> "The learned counsel appearing on behalf of the respondent-Bank contends that the present writ petition is liable to be dismissed since an excess amount had been released in favour of the petitioner on fixation of higher pension, even though the same was neither admissible nor payable to him. An inadvertent release of excess amount would not confer any title on the petitioner to retain the said money. The recovery of excess pension was effected by way of monthly installments commencing from October 2018 onwards. It is further contended that there is no relationship of employer and employee between the petitioner and the respondent-Bank and that the respondent-Bank is acting only as a pension disbursing agency for and on behalf of the Sanctioning Authority. A mere error in crediting pension cannot thus fasten liability on the respondentBank and a recipient of an undue benefit would be liable to refund the excess benefit received by him. He further contends that the issue in question has already been decided by this Court in CWP No.14116 of 2015 titled as 'Chaman Lal Vs. State of Punjab & Others' decided on 27.04.2022 as well as in CWP-8511 of 2020 titled as 'Surinderjit Singh Vs. State of Punjab & Others' decided on 12.09.2023. Both these cases pertain to the wrong re-fixing of the pension by the Bank and the recovery thereof. The action of the bank in effecting the recovery has been upheld by this Court by referring to the judgment in the matter of State of Punjab and others Vs. Rafiq Masih (White Washer) etc. reported as(2015) 4 SCC 334 and holding that the said judgment is not applicable to the facts of the concerned case.
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> Reliance was also placed on a Division Bench Judgment of this Court in LPA No.874 of 2014 titled as 'Balbir Singh Versus State of Haryana and others' decided on 04.09.2014 to contend that clerical mistake in refixation of the pension can be rectified and the excess amount paid can be duly recovered.
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> The abovesaid orders passed by this Court are not refuted or denied by the counsel for the petitioner. The counsel

for the petitioner also does not dispute that the controversy involved in the present case is covered by the ratio of the above judgment.

In view of the above, I do not find any merit in the present petition, and the same deserves to be dismissed in light of the judgments passed by this Court in the matters of **Chaman Lal and Surinderjit Singh (supra)**.

The instant petition is accordingly dismissed."

6. Learned counsel for the petitioner was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

7. In light of the aforesaid judgments, the present petition sans merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

19.03.2024
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No